

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 2212/Ahd/2018

with

CO No. 144/Ahd/2019

निर्धारण वर्ष/Assessment Year: 2010-11

Asst. Commissioner of Income-tax, Central Circle 1(1), Ahmedabad	Vs.	M/s. Blueray Trading Pvt. Ltd., 306, Snehdisha, Parab Wadi, Highway Road, Thane, Maharashtra PAN : AAFCM 8859 D
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent & Cross-Objector)
Assessee by :	Shri K.C. Thaker, AR	
Revenue by :	Shri V. Nandakumar, CIT-DR	

सुनवाई की तारीख/**Date of Hearing** : **17.10.2024**
घोषणा की तारीख /**Date of Pronouncement**: **26.11.2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal filed by the Revenue and the corresponding Cross-objection thereof filed by the assessee are directed against the order of the learned Commissioner of Income-Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "CIT(A)" for short] dated 17.08.2018 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2010-11.

2. We shall first take up the Department's appeal for adjudication.

3. At the outset, it was stated that the solitary grievance of the Revenue against the order passed by the Id.CIT(A) was relating to the deletion of addition made by the Assessing Officer to the income of the assessee of share capital and premium received during the year finding the same to be mere accommodation entries. The share capital received by the assessee-company during the impugned year so treated as accommodation entry amounted to Rs. 6.70 crores, including share premium of Rs.990/- per share and was received from three companies namely

- (i) Prabhav Industries Ltd – Rs.3.20 crores,
- (ii) Shri Ganesh Spinners Ltd – Rs.3 crores &
- (iii) Juliet Merchants Private Ltd – Rs.50 lakhs.

4. The Assessing Officer had treated the same as bogus accommodation entry based on information available with him that these entities were bogus paper companies managed and controlled by Shri Shirish Chandrakant Shah. The information was based on evidences gathered during search and survey action conducted on Shirish Shah which revealed him to be involved in providing accommodation entries through several dummy companies owned and managed by him, which fact was admitted to by Shri Shirish C. Shah and his accomplices in these companies who were made Directors in these paper companies, as also the intermediaries who brought together the beneficiaries and the accommodation entry provider, all of whom admitted to the same in their statement recorded during search.

5. The Id. CIT(A), however, deleted the addition made finding the evidences and statements relied upon by the Assessing Officer for treating the share capital and premium received by the assessee during the year as bogus accommodation entries to be not sufficient

or having no evidentiary value. On the contrary, he found the assessee to have discharged its onus of proving the share capital and premium so received to be genuine having established the identity, creditworthiness and genuineness of the transactions before him.

6. Aggrieved by the order of the Id. CIT(A), the Revenue has come up in appeal before us raising the following grounds:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.6,70,00,000/- made by the AO u/s.68 of the Act on account of unexplained share capital and share premium received from Prabhav Industries of Rs. 3,20,00,000/-, Shri Ganesh Spinners Ltd. of Rs.3,00,00,000/- and Juliet Merchants Pvt. Ltd. of Rs.50,00,000/-, without appreciating the fact that these three companies from which share capital and share premium is claimed to have been received are just paper companies/shell companies and are part of a big nexus managed and controlled by Shri Shirish Chandrakant Shah, Mumbai who is involved in providing various accommodation entries including one time capital entries to various beneficiaries on receipt of cash?”

2. The Id.CIT(A) has erred in law and on facts in not appreciating that there was no substance in the transactions of share capital receipt by the company, M/s Blueray Trading Pvt. Ltd. specially in the light of statements of SCS and Directors of the companies from which share capital was claimed to have been received.

3. The Id.CIT(A) has erred in law and on facts in not considering or appreciating the overwhelming evidence relating to the nature of these transactions discussed in detail by the AO in the assessment order.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O, be restored to the above extent.”

7. We have heard both the parties, we have also carefully gone through the order of the Assessing Officer and also of the Id. CIT(A). On considering all of the above, we find that the Id. CIT(A) has deleted the addition made by the Assessing Officer of share capital and premium amounting to Rs.6.70 crores without properly and

completely appreciating the case made by the Assessing Officer for treating the same as bogus accommodation entry.

8. To put it briefly, while the Assessing Officer had taken into consideration all evidences found during search on Shri Shirish C. Shah ,coupled with the statements made of Shri Shirish C. Shah and his accomplices in the accommodation entry business carried out by him admitting to providing only accommodation entry through various companies run and managed by Shri Shirish C. Shah, the Id. CIT(A), we find, has not correctly appreciated the evidences on which the Assessing Officer has relied and has also not considered the consolidated view taken by the Assessing Officer of all adverse material before him, but has gone on to reject each evidence singularly as having no evidentiary value. The Id. CIT(A), we find, has literally not applied his mind at all to the case made out by the Assessing Officer.

9. This is evident from the fact that while the Assessing Officer's case for treating the share capital and premium received from the aforementioned three companies as bogus was that the evidence gathered during search on Shri Shirish C. Shah revealed the fact that 212 companies ,which included the companies through which share capital had been received by the assessee ,were engaged in providing accommodation entries only by way of share capital, share premium, share application money, unsecured loans, long term and short term capital gains and were all managed and controlled by Shri Shirish C. Shah. Paragraph No. 3.1 of the order of the Assessing Officer lists all such evidences which were found by the Assessing Officer as under:-

“3.1 Evidence with regard to the fact that all the 212 companies are managed and controlled by him has also been found. The

details of the evidence found during the course of search establishing these facts is summarized hereunder:

> Details of 220 bank accounts and more than 300 Blank and signed cheque books, bank statements, bank deposits - withdrawal and RTGS slips were found. These pertain to 210 companies including 16 listed companies managed and controlled by him and used for providing accommodation entries by Shirish Chandrakant Shah.

> Directors of the companies have been found to be dummy and for namesake. Statements of persons who are Directors in large number of companies, have been recorded wherein they have admitted that they are mere name lenders. Notarized declarations have also been filed by a number of Directors wherein they have stated that they are only name lenders and do not know about the activities of the companies in which they are Directors.

> PAN Cards, seals of the companies, original stamp, records of statutory compliance as well as user Id and password of e-banking etc. of all these companies have been found and taken record of during the search and survey proceedings.

> Regular accounts as well as accounts w.r.t. to accommodation entry maintained and found at premises of SCS.

> companies do not having any offices (in fact the registered addresses shown are professional arrangement with persons for receipt of correspondence).”

10. As is evident from the above, during search on Shri Shirish Shah, 220 bank accounts and more than 300 blank and signed cheque books, bank statements, bank deposits – withdrawal and RTGS slips pertaining to 210 companies were found. The directors of these companies admitted that they were only name lenders and notarized declarations to this effect were given by them. PAN cards, seals of the companies, original stamp and all other records pertaining to these

companies were found during the search on Shri Shirish Shah. Further and more importantly, the regular accounts as well as accounts related to accommodation entries were found at the premises of Shri Shirish Shah. **Thus, during search at the premises of Shri Shirish Shah, several documents pertaining to 210 companies were found which showed that these companies were being used only for providing accommodation entries and the Directors of these companies stated on oath that they were mere name lenders and did not know anything about the activities of the companies in which they were Directors.**

11. **The assessment order also notes that Shri Shirish Shah himself explained the modus operandi of the whole accommodation entry provided by him through his associates. Search action on Shri Shirish Shah unearthed records of providing accommodation entry by him in “cash sheets” as well as in various accounts maintained in the name of intermediaries who introduced clients to Shri Shirish Shah. These cash sheets as well as the statement of Shri Shirish Shah and his employees identified several persons including Shri Rajesh Jhaveri, Satish Saraf, Hemant Dangi and Pintu as the main intermediaries through whom the clients availed accommodation entries from Shri Shirish Shah. The accommodation entries paid were found to be recorded in ‘cheque sheets’ where the same reference of the intermediary referred to in the ‘cash sheet’ were found. Thus, correlating the details of accommodation entry maintained in the ‘cash sheets’ with the accommodation entries paid through cheque recorded in ‘cheque sheets’.Details of the accommodation entries were also found in ‘excel sheets’ in softcopy in sheet named “OT start to 31.3.12”. These details in the excel sheet revealed the**

assessee-company to have been paid cheques amounting to Rs.30 lakhs (6 entries of Rs. 5 lakhs each) from Prabhav Industries Ltd. mentioning the reference of one of the intermediaries identified i.e. Satish Saraf.

12. Further, even the assessment order notes **Shri Ganesh Spinners Ltd. also to be one of the companies managed and operated by Shri Shirish C. Shah. It also notes that the Directors of both Prabhav Industries and Shri Ganesh Spinners Ltd to have filed an affidavit to the effect that they are dummy directors and name lenders as directed by employee of Shri Shirish C. Shah who also affirmed to the fact that the above two companies were only shell companies of Shri Shirish C. Shah.**

13. It is based on all these evidences found during search on Shri Shirish C. Shah revealing Shri Shirish Shah to be running the business of providing accommodation entry corroborated with the admission of Shri Shirish C. Shah and his accomplices to the said fact that the Assessing Officer treated the share capital received by the assessee from three such companies identified by him to be run and managed by Shri Shirish C. Shah as being mere accommodation entries received by the assessee.

14. The Id. CIT(A), we find, in his order has conveniently picked each piece of evidence singularly and treated it as having no evidentiary value.

His findings at paragraph No. 6.2 of his order reveal that **he first picked up the excel sheet data** noted by the Assessing Officer to reveal that the assessee had received share capital of Rs.30 lakhs from Prabhav Industries and noted from the same that this was a cheque

transaction, which was recorded by the assessee also in his books of accounts and there was nothing adverse which could be read from this sheet. He noted that there was no cash mentioned in the said sheet anywhere and documents seized have to be read as it is, and finding, therefore, nothing adverse in this sheet, he discarded this piece of evidence as having any evidentiary value against the assessee.

While holding so, the Ld.CIT(A) , we find ,has conveniently ignored the other documents and bank accounts found /revealed during search , noted by the AO to contain all details and the entire money trail of providing accommodation entry as admitted by Shri Shirish Shah in his statement recorded during search. The AO notes a cash sheet and a cheque sheet also to be found, entries in both corroborating the fact of accommodation entries being provided. The excel sheet, considered by the Ld.CIT(A) , is we find, one of the many documents found during search , all of which considered together corroborated the fact of Shirish Shah providing accommodation entries. Therefore rejecting the excel sheet as having no evidentiary value by the Ld.CIT(A) , we hold is not based on complete appreciation of facts of the case.

15. Thereafter, the CIT(A) **discards the statements of Shri Shirish C. Shah and his various employees and accomplices** admitting to the fact of having provided accommodation entries to the assessee, as having no evidentiary value since the assessee was not afforded any opportunity of cross-examination.

This the ld. CIT(A) holds, we find, without controverting the findings of the Assessing Officer who rejects the assessee's request for cross-examination of Shri Shirish C. Shah and others noting that the

case of the Revenue is not based merely on the statement of Shri Shirish C. Shah, but also on evidences collected during search and, therefore, until the assessee counters and contradicts the evidences so collected during search, there is no need for providing any cross-examination of Shri Shirish C. Shah and his accomplices to the assessee. The AO rejected cross examination noting that the statement recorded was not the main or material evidences to make the case against the assessee, but was only a collateral evidence. The Assessing Officer relied upon several decisions in this regard, including that of the Hon'ble Bombay High Court in the case of Satellite Engg. Ltd Vs. Union of India, 1983 ELT 2177 (Bom.) and Kanungo and Co. Vs. Collector of Customs [1983] ELT 1486 (SC), laying down the proposition that principles of natural justice do not require that in matters where all material on which reliance was placed by the Department is confronted to the assessee, it was for the assessee to give a suitable explanation and *dehors* any explanation; there is no requirement to provide any cross-examination of the persons whose statements have also been relied upon. The Ld.CIT(A) , without controverting the above detailed findings of the AO supported with judicial decisions has simply discarded the statements recorded of various persons during search as having no evidentiary value.

16. The ld. CIT(A) has discarded the statements of the Directors of Prabhav Industries, Sh. Ami Mota finding that he was appointed as Director after the date of transactions with the assessee.

This was a pertinent fact which was brought to the notice of the ld. CIT(A) for the first time and without confronting the Assessing Officer with the same ,who was a party to the dispute before him, he

relied upon it and discarded the statement of Sh. Ami Mota of having no evidentiary value.

17. The ld. CIT(A) discards the statement of Shri Shirish C. Shah as having no evidentiary value, also for the reason that he did not name the assessee as a beneficiary. The ld. CIT(A) thereafter notes that the documents relied upon by the Assessing Officer were all found at the premises of Shri Shirish C. Shah and not at the premises of the assessee. They were not found to be in the handwriting of any person concerned or related to the assessee-company and he, therefore, held that they could not be used against the assessee.

This when the case of the AO rested on the findings of the search that Shirish Shah was providing accommodation entries through various dummy companies and the assessee was noted to have entered into transaction with such alleged dummy companies. The AO's case never rested on any direct finding against the assessee

18. It is clearly evident from the above that the ld. CIT(A) has picked up each piece of evidence to discard it as having no evidentiary value when the Assessing Officer had considered all of them together to make a case against the assessee. As noted above the AO's case of the assessee having taken accommodation entry is based on evidences found during search on Shirish Shah coupled with admission of all persons involved and assisting Shirish Shah to the effect that he was involved in providing accommodation entries through various bogus entities and the assessee being a beneficiary from such bogus entities during the impugned year. All the above facts considered together have led the AO to the conclusion that the share capital taken by the

assessee from the alleged bogus entities of Shirish Shah was nothing but an accommodation entry.

19. The approach of the Id. CIT(A) in singularly dismissing each piece of evidence, we find, is totally incorrect, and we are of the view that the matter needs to be reconsidered by the Id. CIT(A) after giving a holistic consideration to all the evidences and statements relied upon by the Assessing Officer for holding the share application and share premium received by the assessee during the year to be bogus accommodation entry. For the said purpose, we restore the issue back to the Id. CIT(A) to adjudicate it afresh.

20. The appeal of the Revenue is allowed for statistical purposes.

21. We shall now be dealing with the assessee's cross objection.

CO No.144/Ahd/2019

22. The assessee in its cross-objection filed before us has raised the following grounds:

"1. The Ld. CIT(A)-11, Ahmedabad erred in law and on facts in dismissing the ground of the Assessee challenging the reopening of the assessment for the reasons recorded by the AO.

2. The Ld. CIT(A)-11, Ahmedabad has further erred in law and on facts in rejecting the contention of the assessee that the reassessment proceedings are bad in law and deserves to be quashed."

23. No arguments vis-a-vis ground no.1 were made before us, and the same is, therefore, dismissed as not pressed.

24. Vis-à-vis the ground no.2 raised before us, the contention of the Id.counsel for the assessee was that in terms of provisions of law, the assessment in the present case ought to have been made under section 153C of the Act and not under section 147 of the Act, as done by the

AO; that Courts have held assessments so framed under section 147 of the Act to be invalid. That therefore, in the present case, the assessment order passed under section 147 of the Act, needs to be struck down as invalidly passed.

25. Elaborating on the same, ld.counsel for the assessee contended that where the material found during the search on a person pertained or related to a third-person, then jurisdiction under section 153C of the Act was to be assumed by the AO for assessing the income of the said third person in accordance with the provisions of section 153A of the Act. The ld.counsel for the assessee pointed out that initially the provisions of section 153C of the Act were worded so to state that where material “belonging” to a third person were found during search, assessment under section 153C of the Act read with section 153A of the Act was to be framed on the third-person; that subsequently, an amendment was effected to the said section substituting the word “belonging” with the order “pertaining” to a third person. Hon’ble Apex Court, he pointed out, in the case of Vikram Sujitkumar Bhatia, 453 ITR 417 (SC) had interpreted the meaning of the terms “belonging” and “pertaining” and held no difference to the meaning of the said terms and accordingly laid down that the word “belonging” has the same meaning as that to the word “pertaining”; that therefore even prior to 1.6.2015, when the material pertaining to a third-person was found during the search on an assessee, assessment proceedings under section 153C of the Act were to be done. The ld.counsel for the assessee contended that this proposition applied to the impugned case also, wherein, he pointed out that reopening was resorted to on the basis of material found during search conducted on one Shri Shrish C Shah and his key employee and associates who were allegedly involved in providing accommodation

entry. The ld.counsel for the assessee contended that since the basis of reopening was the information collected during search, proceedings under section 153C of the Act, ought to have conducted on the assessee, and since the AO had instead framed assessment under section 147 of the Act, the assessment so carried out was invalid. Reliance was placed on the decision of “A-Bench” of the ITAT Ahmedabad in the case of Ghanshyam Madhusudan Soni Vs. ITO in ITA No.296/Ahd/2018 dated 2.7.2024 for the proposition that when the action to make assessment was based on material found during third-party search, reopening under section 147 of the Act was not valid in law. Copy of the order was placed before us.

26. The ld.DR on the other hand, vehemently contested this plea of the assessee, stating that it is only in the circumstances that when the material pertaining to a third-person is found during search on a person that proceedings under section 153C of the Act have to be initiated on the third person. The ld.DR emphasised the fact of assumption of jurisdiction to frame assessment under section 153C of the Act, based on material found during the search pertaining to a third person. The ld.DR contended that in the present case, the basis of framing assessment/reassessment was not any specific material pertaining to the assessee found during the search on Shri Shrish C Shah. He pointed out that on the contrary, the facts on record were that search on Shri Shrish C Shah only revealed the fact that he was involved in providing accommodation entry through various bogus non-existing entities, and the assessee being recipient of share capital through one such bogus entity, reopening was resorted to in the case of the assessee in terms of section 147 of the Act. He pointed out that search on Shri Shrish C Shah did not reveal any specific material pertaining to the assessee, but only general information to the effect

that Shri Shrish C Shah was involved in providing accommodation entries through bogus entities, which were all identified. He, therefore, contended that in the absence of any material pertaining to the assessee found during the search on Shri Shrish C Shah, the AO was precluded from assuming jurisdiction to frame assessment under section 153C of the Act. Therefore, he had rightly assumed jurisdiction under section 147 of the Act, on the basis of information in his possession of the assessee having availed accommodation entry from bogus entity of Shri Shirish Shah and the order therefore passed was clearly a validly passed order.

27. In support of her contention, Ld.DR drew our attention to the contents of the reasons recorded for reopening the case of the assessee by the AO in the present case, which were placed before us at page no.94 to 99 of the PB filed by the assessee, and which also form part of the assessment order. Our attention was also drawn to the contents of the assessment order to demonstrate the fact that the assessment framed in the present case was not based on any material pertaining to the assessee found during the search on Shri Shrish C Shah.

28. At this juncture, the ld.counsel for the assessee was asked to counter the contention of the ld.DR that the provisions of section 153C were attracted only when the material pertaining to third-person was found during the search on a person. The ld.counsel for the assessee completely agreed with the said proposition of law. The ld.counsel for the assessee, thereafter, was asked to submit before us as to which document, therefore, pertaining to the assessee was found during the search on Shri Shrish C Shah. Regretfully and disappointingly, despite taking up so much time of the Bench in arguing on this issue before us, he was unable to draw our attention to even a single

document, which could be said to be adverse against the assessee found during search conducted on Shri Shrish C Shah. The only document probably which he could point out before us was the document identified as excel sheet "OT start to 31-03-12". But as the facts noted in the order of the AO and the Id.CIT(A) reveal that this document only revealed entry of share capital received by the assessee from two entities viz. Prabhav Industries Ltd., and Shri Ganesh Spinners Ltd., which were duly accounted for in the books of the assessee. This document found during the search on Shri Shrish C Shah therefore did not reveal anything adverse pertaining to the assessee. On the contrary, the contention of the Id.DR that the information in the possession of the AO from the search conducted on Shri Shrish C Shah was only to the effect that he was involved in providing accommodation entry through various dummy concerns floated by him, and noting that the assessee was also the recipient of entry from these alleged dummy concerns, that assessment proceedings under section 147 of the Act was undertaken on the assessee , was found to be correct. The Id.counsel for the assessee was unable to controvert this contention of the Id.DR.

29. In view of the same, it is, but, crystal clear that there is no merit on facts itself ,in the ground raised by the assessee before us in the impugned CO that the assessment in the present case ought to have been framed in terms provisions of section 153C of the Act as opposed to having been framed under section 147 of the Act, thus, rendering it invalid. The Ld.Counsel for the assessee, as noted above, has been unable to demonstrate how the provisions of section 153C of the Act were applicable in the facts of the case. As per the admission of the Id.counsel for the assessee himself before us, no material pertaining to the assessee having been found during the search on Shri Shrish C

Shah, there was no occasion, we hold, for assessment to be framed in terms of section 153C of the Act.

The ground raised by the assessee, we hold, is therefore, devoid of any merits, and accordingly dismissed.

The CO of the assessee is accordingly dismissed.

30. In result, the appeal of the Revenue is allowed for statistical purpose, whereas the CO filed by the assessee is dismissed.

Order pronounced in the Court on 26th November, 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 26/11/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER